

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 28 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

HECTOR ARREZ VIEYRA,

Petitioner - Appellant,

v.

ROBERT SCHIEDLER, Superintendent of
Two Rivers Correctional Institution,

Respondent - Appellee.

No. 05-35285

D.C. No. CV-02-01619-TMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Thomas M. Coffin, Magistrate Judge, Presiding

Submitted March 7, 2006^{**}
Portland, Oregon

Before: FERNANDEZ, TASHIMA, and PAEZ, Circuit Judges.

Hector Arrez Vieyra appeals the district court's denial of his petition for a writ of habeas corpus. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo the district court's denial of Vieyra's petition. *Custer v. Hill*, 378 F.3d 968, 971 (9th Cir. 2004). We will not reverse the district court unless the Oregon state courts' adjudication of Vieyra's claims:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

Vieyra's argument that trial counsel misadvised him regarding the immigration consequences of his no contest pleas was not fairly presented to the state courts, *see Correll v. Stewart*, 137 F.3d 1404, 1411-12 (9th Cir. 1998), and Vieyra is procedurally barred from returning to state court and litigating it, *see Or. Rev. Stat. § 138.550(3); Custer*, 378 F.3d at 974. We therefore may not consider the merits of this claim, *see Cassett v. Stewart*, 406 F.3d 614, 621 n.5 (9th Cir. 2005), and we affirm the district court's denial of Vieyra's petition on this ground.

Vieyra also claims that his plea was not knowing, intelligent, and voluntary because trial counsel failed to inform Vieyra that he could receive consecutive sentences. The Oregon Circuit Court found that Vieyra did not demonstrate the prejudice required by *Strickland v. Washington*, 466 U.S. 668 (1984), and Vieyra

has not presented clear and convincing evidence that this finding was incorrect, *see* 28 U.S.C. § 2254(e)(1). Because the state court did not unreasonably apply *Strickland* or base its decision to deny Vieyra's claim on an unreasonable determination of the facts, the district court properly denied relief on this second ground as well. *See id.* § 2254(d).

AFFIRMED.